APPLICANTS:
John & Kimberly Donaldson

REQUEST: Special exception to allow lawn and landscaping services, and a variance which requires a Type "C" buffer yard along adjacent road right-of-way

HEARING DATE: November 10, 2010

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5723

ZONING HEARING EXAMINER'S DECISION

APPLICANT: John C. Donaldson and Kimberly A. Donaldson

LOCATION: 539 Craigs Corner Road, Havre de Grace, Maryland
Tax Map: 37 / Grid: 2A / Parcel: 91
Second (2nd) Election District

PRESENT ZONING: AG / Agricultural

REQUEST: Special Exception, pursuant to Section 267-88H(2) of the Harford County Code, to allow lawn and landscaping services, and a variance from Section 267-88H(2)(c) which requires a Type "C" buffer yard along adjacent road right-of-way or adjacent residential lot within the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is a 3.126 acre lot located on Craigs Corner Road in Havre de Grace, and improved by a one story dwelling, garage and smaller outbuildings. The property has been used, without permit, by the Applicants for their landscaping business, trading as J.D. Lawn Services, Inc.

John Donaldson, Co-Applicant, explained that he and his wife purchased the subject property in 1993 and reside on it together with their family.

According to Mr. Donaldson the parcel fronts on Craigs Corner Road and drops quite steeply toward the rear of the property. The elevation begins to drop approximately one half of the way back on this approximately 600 foot deep lot. The very rear of the property is in forest and wetland. Along the south property line Mr. Donaldson has planted Leyland Cypress which he states acts as a significant buffer.

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The Applicants propose, in order to facilitate their landscaping business, to construct a 54 foot by 110 foot building to the rear of the property and at the approximate point where the lot begins to slope downward. The building would be used to store the majority of the landscaping equipment, materials and vehicles which the Applicants use in their business.

On the property are kept two vehicles used partially for personal use, a 1999 GMC 2500 pick-up truck and a 2009 Chevy 2500 pick-up truck, which will not be stored inside. The business equipment of the Applicants is listed on Applicants' Exhibit 12.

Mr. Donaldson explained that a horse farm which provides riding classes is located to the northeast of the parcel, and to the south is located residential dwellings and lots.

The Applicants incorporated their business in 1983 and currently have fourteen (14) seasonal employees, although in the off-season they have as few as five. Many of these employees report directly to the job site and do not come onto the subject parcel.

The Applicants plan to add no new employees or equipment although they will be replacing equipment as necessary.

Times of business operation are 7:00 a.m. to 6:00 p.m., five days a week, Saturdays 8:00 a.m. to 4:00 p.m., and with no hours of operation on Sunday. The proposed building is designed to store all equipment and business vehicles. The building originally proposed was much larger than that now proposed. Mr. Donaldson has downsized his original design at the request of the Department of Planning and Zoning. He believes that the proposed size is the minimum necessary to accommodate his equipment. Mr. Donaldson's plan shows proposed parking to the southeast side of the building, and he understands that the parking area and access lane must be paved.

Mr. Donaldson stated that there would be some outside lighting around the storage building and parking area. Because of the topography of the parcel the building will be set into the downhill slope of the lot which will act to almost fully screen the building from traffic on Craigs Corner Road. Furthermore, plantings which the Applicants have already installed should be sufficient, in Mr. Donaldson's opinion, to fully screen the use from adjoining residential properties and roads. A building of the size proposed by the Applicants is not unusual size in this Rural Residential/Agricultural District.

Mr. Donaldson believes that this request for a special exception will have no adverse impact on adjoining neighbors or properties.

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Mr. Donaldson is also asking for a variance to allow a 20 foot buffer along Craigs Corner Road instead of the Type "C" buffer required by the Code. His house is located about 80 feet from the Harford County right-of-way and if he were required to comply with the Type "C" buffer requirements normally applicable to a special exception request then much of his front yard would be taken up by required plantings. He feels that a front yard buffer of that size is not necessary and that a 20 foot deep buffer will provide more than sufficient screening.

Next for the Applicant testified Mitch Ensor of Bay State Land Services. Mr. Ensor was accepted as an expert land planner.

Mr. Ensor confirmed Mr. Donaldson's testimony concerning the uses of surrounding properties. According to Mr. Ensor, the Department of Planning and Zoning did not approve the original size of the building, as proposed, so it was revised and reduced to its proposed configuration of 110 feet by 54 feet. This, according to Mr. Ensor, is the minimum size necessary to accommodate the Applicants' landscape services.

Mr. Ensor also confirmed that the parcel topography slopes downward from Craigs Corner Road which acts to minimize the impact of the building as it is set within the slope of the property. Mr. Ensor also verified Mr. Donaldson's testimony that a number of other buildings exist in the neighborhood which are larger than that proposed by the Applicants. Mr. Ensor has reviewed the application of Limitations, Guides and Standards, Section 267-9I, and believes the Applicants can comply with all applicable requirements, with the exception of the Type "C" landscaping buffer to which the variance is being requested.

Mr. Ensor believes that the Type "C" buffer requirement was intended to shield businesses from passersby. However, compliance with this requirement would mandate approximately 200 planting units in the front yard of the Applicants' residence which would virtually eliminate the entire front yard. Accordingly, the requirement that a Type "C" buffer be installed is not necessary, given existing screening and the topography of the property. Mr. Ensor explained that the first floor of the Applicants' dwelling will be about 10 feet above the first floor of the proposed equipment storage building to the rear.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune believes that the Applicant can meet all special exception provisions and that the variance to the Type "C" buffer requirement is justified. Both the topography of the property and existing landscaping combine to provide adequate screening which makes the property unique and eliminates any need for compliance with the Type "C" buffer requirement. Mr. McClune added that sight distances on Craigs Corner Road are good and both he and the Department recommend approval for this special exception and requested variance.

No testimony or evidence was given in opposition.

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APPLICABLE LAW:

Harford County Code Section 267-88H(2) states:

"(2) Lawn and landscaping services. This use may be granted in the AG and VB districts, provided that:

(a) A minimum parcel area of 2 acres in the AG district and .5 acres in the VB district is required.

(b) All parking areas must be paved.

(c) A type "C" buffer yard, pursuant to Section 267-30 (Buffer Yards), shall be provided along any adjacent road right-of-ways or adjacent residential lots.

(d) All commercial vehicles, equipment and supplies must be stored within an enclosed building."

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-63.H (Chesapeake Bay Critical Area Overlay District, variances), variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further

> *action on another application for substantially the same relief until after two (2) years from the date of such disapproval."*

Section 267-9I, Limitations, Guides and Standards, of the Harford County Code is also applicable to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants have used their 3.126 acre parcel over the years as their place of residence and as a location for their lawn services business, apparently without compliant. It appears that that business has made a fairly intensive use of the property. One merely has to review attachments to the Staff Report to see the extensive assortment of equipment, tools, tires, miscellaneous items, and various other items stored on the parcel. Furthermore, the Applicants employ up to fourteen employees during the summer, which obviously implies a fairly active business.

The Applicants have, however, agreed to comply with all applicable special exception requirements if now granted a special exception for this use. The Applicants have also agreed that all equipment will be stored within the new building to be built on the property, with the exception of two personal vehicles, have agreed to clean-up and remove all junk and other material from outside of the building and to maintain and improve existing screening.

The Applicants also request, however, a variance to the Type "C" buffer requirement which would, if complied with, require them to virtually fully screen their entire frontage of their house to Craigs Corner Road. They are suggesting, correctly it would appear, that due to the downward slope and topography of the property, together with existing screening which will be supplemented, that the Type "C" buffer requirement is not necessary. By the use of selective landscaping, and given the parcel's topography, the business uses should be fully screened from all surrounding residential uses and roads, without the need for a Type "C" buffer.

It is clear that the Applicants are entitled to a variance to the Type "C" buffer requirement of Section 267-88H(2). The topography of the property falls from Craigs Corner Road. The 55 foot by 110 foot storage barn to be constructed by the Applicant will be at a significantly lower elevation than both the roadbed of Craigs Corner Road and the residence. Significant landscaping exists on both sides of the parcel and in the vicinity of the proposed building and parking areas. This landscaping will be supplemented by additional screening. Furthermore, compliance with the Type "C" buffer would have little impact except to eliminate virtually the entire front yard of the Applicants' dwelling.

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The relief requested by the Applicants is the minimum necessary to alleviate the practical difficulty which they would suffer by the imposition of this requirement and the variance, if granted, would have no adverse impact on adjoining parcels. Indeed, the construction of the building and the elimination of existing outside storage, and the addition of more screening, should significantly minimize the impact of the use on the neighbors.

The Applicants can also easily meet the remaining considerations of Section 267-88(H)(2) as follows:

> *(2) Lawn and landscaping services. This use may be granted in the AG and VB districts, provided that:*
>
> *(a) A minimum parcel area of 2 acres in the AG district and .5 acres in the VB district is required.*

This property is zoned agricultural and is 3 plus acres in size.

> *(b) All parking areas must be paved.*

All outside parking, and the drive aisle, shall be ordered paved as a condition of this decision.

> *(c) A type "C" buffer yard, pursuant to Section 267-30 (Buffer Yards), shall be provided along any adjacent road right-of-ways or adjacent residential lots.*

This requirement has been eliminated by the granting of the variance discussed above.

> *(d) All commercial vehicles, equipment and supplies must be stored within an enclosed building.*

All equipment, vehicles and supplies will be stored within the enclosed building, except those two trucks which are partially used for personal purposes as noted above.

The Applicants also are found to comply with all considerations of Section 267-9I, as follows:

> *(1) The number of persons living or working in the immediate area.*

The area in which the Applicants' property is located is a mix of rural residential and farm uses. The proposed building is not out of keeping with other buildings in the neighborhood. The fact that all outside storage of equipment, tools, vehicles and junk will be eliminated should be an improvement to the neighborhood. Accordingly, there should be no adverse impact on the people living or working in the area, nor should be people in the area have any potentially adverse impact on the proposed special exception.

(2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Craigs Corner Road is a County owned and maintained road. Testimony was that adequate sight distance exists. The Applicants use generates a relatively minor amount of traffic which should cause no unusual traffic hazard.

(3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

This special exception is permitted in the Agricultural District. Special exception uses are considered to be principally permitted uses as long as all specific and general conditions are affected and there is no unusual adverse impact on the neighborhood.

(4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

While the potential exists for some unwelcome emissions from the site, such as exhaust, noise, smells and odors, in fact the Applicants' use has existed on the property for some years without any apparent complaint. The storage of all vehicles and equipment within an enclosed structure should reduce if not eliminate the impact of such emissions on the neighbors.

(5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Local and State police protection is available. Local fire protection is provided by Level Volunteer Fire and Ambulance. Water and sewer is privately maintained but the proposed use should have little impact on those private septic and water systems.

(6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The use as proposed is consistent with the generally accepted planning principles.

(7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

(8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The request is consistent with the 2004 Master Land Use Plan.

(9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such features or opportunities have been identified.

(10) *The preservation of cultural and historic landmarks.*

No such features have been identified.

Accordingly, it is clear that the Applicants favorably meet the requirements of Section 267-9I, Limitations, Guides and Standards.

Lastly, the Applicants must show that the use proposed, that is, a lawn services business, has no unusually adverse impact at the location proposed compared to a similar use at another location within its zone. See Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). In order to answer this inquiry the typical impact of such a use on surrounding residences, roads, environment, etc. must be examined. If this review results in a finding that due to some feature both on or off the subject property the impact is more pronounced than normal, then the use must be denied.

However, it is found that this use has no harm greater than that normally associated with such a use. The use will have a low traffic impact on Craigs Corner Road; screening will be adequate to buffer from surrounding residential properties; the construction of a building in which to store all vehicles and equipment will eliminate most visual impacts of the use and minimize any environmental impact from noise, odors, fumes, etc. All of these impacts are associated with a lawn service business, but none of these impacts are greater than one would normally expect.

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CONCLUSION:

Accordingly, it is recommended that the proposed variance and special exception be granted, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved thru the Development Advisory Committee (DAC). A landscaping plan shall also be submitted with the preliminary plan.

2. The Applicants shall obtain all necessary permits and approval for the construction of the storage building, including the proposed retaining wall.

3. The Applicants shall obtain a permit for the shed located to the rear of the garage. A Use and Occupancy Permit shall be obtained for the existing garage.

4. The drive aisle and parking area shall be paved prior to the issuance of a Use and Occupancy Permit for the proposed building.

5. No outside storage of vehicles, equipment or supplies shall be permitted. All miscellaneous junk and debris shall be removed from the property or stored within the proposed building.

6. The approval is for the Applicants only and shall become void if the property is sold or transferred.

Date: January 13, 2011

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 11, 2011.